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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

In re S.B., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

S.B.,

Defendant and Appellant.

A135649

(San Francisco County
Super. Ct. No. JW086350)

S.B. (hereafter the minor) appeals from a juvenile court order denying his motion, pursuant to Welfare and Institutions Code section 782,¹ seeking to set aside findings and dismiss a delinquency petition filed against him in 2008. We agree with the minor that the record does not show the juvenile court exercised its discretion when it denied the

¹ All further unspecified statutory references are to the Welfare and Institutions Code. Section 782 states: “A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require such dismissal, or if it finds that the minor is not in need of treatment or rehabilitation. The court shall have jurisdiction to order such dismissal or setting aside of the findings and dismissal regardless of whether the minor is, at the time of such order, a ward or dependent child of the court.”

motion. Accordingly, we reverse the order and remand the matter for further proceedings.

FACTS²

On May 23, 2008, the juvenile court found that the minor came within the meaning of section 602 after he admitted that on or about May 9, 2008, when he was 15 years old, he committed a second-degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)). In return for the minor's admission, the district attorney dismissed a weapon sentencing enhancement related to the robbery, and two counts of assault with a deadly weapon, "a BB gun and/or a knife". The juvenile court declared the minor a ward of the court and placed him under the supervision of the probation department. On June 10, 2009, the juvenile court declared the minor "has successfully completed probation," and his wardship was terminated.³

Three years later, on April 9, 2012, the now 19-year-old minor filed this motion, pursuant to section 782, seeking to set aside the findings and dismiss the petition on the grounds that he had been rehabilitated and a dismissal would permit him to enlist in the Air Force. In opposing the motion, the district attorney argued the juvenile court had no authority to dismiss the petition because section 782 only applied to "open" cases and California Rules of Court, rule 5.790, only allowed the juvenile court to dismiss a petition at a dispositional hearing. It was alternatively argued that even if section 782 allowed dismissal, the court should not grant the motion because the minor's rehabilitation was insufficient to justify dismissal. According to the district attorney, "[i]f the Court were to accept the [m]inor's position," then all juveniles would be entitled to an order sealing

² We set forth only those facts necessary to resolve this appeal.

³ Despite the successful termination of the wardship, there are collateral consequences to the minor's sustained juvenile adjudication for robbery, including a prohibition against the sealing of his juvenile records (§§ 707, subd. (b)(3), 781), and a prohibition against his possession of a firearm until the age of 30 (Pen. Code, § 29820, subds. (a)(1), (2), (b)).

their records as long as they successfully completed probation even if they sustained an offense for which their records could not be sealed.

At a hearing on May 1, 2012, the juvenile court and counsel discussed the court's authority to dismiss a petition under section 782 if the minor was not entitled to an order sealing his records under section 781. The court continued the matter to allow both parties to look into the legislative history pertaining to section 782. On May 16, 2012, the district attorney filed a second opposition. In pertinent part, the district attorney renewed the argument that the juvenile court should not dismiss the petition because the minor was not entitled to an order sealing his juvenile record. Alternatively, it was again argued that even if section 782 allowed dismissal, the court should not grant the motion because dismissal would not be in the interests of justice or the welfare of the minor.

At the reconvened hearing on May 17, 2012, the juvenile court and the parties again discussed the court's authority to dismiss under section 782, as well as the merits of the minor's entitlement to relief under section 782. During the course of argument, the juvenile court appeared to express concern that there was no appellate case law addressing a section 782 motion made after termination of the wardship, and asked counsel how often juvenile courts granted motions under section 782. In response to the latter query, the prosecutor asserted that as far as she knew a section 782 motion had never been made in the juvenile court in that county. The minor's counsel replied that section 782 motions had been filed in San Mateo County, but counsel did not know "the rate at which [the motions] were granted." At the conclusion of argument, the juvenile court denied the motion to dismiss without comment. The minor filed a timely notice of appeal.

DISCUSSION

Since the hearings held in this matter, our Supreme Court has addressed the parameters of a juvenile court's discretionary authority to dismiss a petition under section 782. (*In re Greg F.* (2012) 55 Cal.4th 393, 416-419.) Consequently, the parties no

longer dispute, and we concur, that although the minor's wardship was terminated, the juvenile court retained "discretionary . . . power" under section 782 to set aside its findings and dismiss the petition if the court found that the interests of justice and the welfare of the minor required dismissal. (*In re Greg F.*, supra, p. 419.) In reviewing an order either granting or denying a section 782 motion, we apply the deferential abuse of discretion standard of review. (*In re Greg F.*, supra, at p. 413.) The juvenile court is not obliged to state its reasons for denying a section 782 motion; it is only when the juvenile court chooses to exercise its discretion to dismiss that its decision "must be supported by a statement of 'specific reasons' in a minute order." (*In re Greg F.*, supra, at p. 413.) Thus, ordinarily, in the absence of any showing to the contrary, we would presume the juvenile court knew and applied "the correct statutory and case law in the exercise of its official duties" when it denied the section 782 motion. (*People v. Mack* (1986) 178 Cal.App.3d 1026, 1032; see Evid. Code, § 664.) However, in this case we cannot be confident that the juvenile court's denial represents an exercise of its discretion in light of its expressed concerns directed to its authority to grant the requested relief. Therefore, we conclude the order should be reversed and the matter remanded to the juvenile court for a reconsideration of the minor's motion. Our decision should not be read and we express no opinion on how the juvenile court should exercise its discretion in deciding the motion.⁴

⁴ In light of our determination, we do not need to address the minor's other arguments.

DISPOSITION

The order is reversed and the matter is remanded for further proceedings consistent with this opinion.

Jenkins, J.

We concur:

Pollak, Acting P. J.

Siggins, J.